

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Criminal Appeal No. 165-DB of 2003

Date of Decision :- October 9, 2006.

Badam Singh

....APPELLANT

VERSUS

The State of Haryana

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mrs. Archana Sharma, Advocate
for the appellant.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is an appeal against the judgment/order dated 23.12.2002/ 24.12.2002 of the learned Sessions Judge, Kurukshetra whereby he convicted Badam Singh son of Rameshwar under Sections 302 and 201 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- under Section 302 I.P.C. Further he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- under

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Section 201 I.P.C. Both the sentences were ordered to run concurrently.

The case of the prosecution is unfolded by the statement Ex.PK of Mam Chand given to HC Prem Singh of Police Station Ladwa wherein he stated that he is resident of Village Ladwa and is an agriculturist by profession. On 9.11.2000 he was irrigating his sugarcane field and noticed that some bones and small piece of clothes of a female were lying in the field. Some hair of head were also lying. Mud was sticking on the hair and head. It appeared that the bones were of a female. There was no flesh on the bones. The bones seemed to be 2-½ months old. They were lying scattered. The clothes were also in pieces. In the meantime, Joginder Singh son of Ajmer Singh arrived at the spot and he was shown the bones. Leaving him at the spot, Mam Chand came to the Police Station Ladwa to record his statement. On the basis of this statement Ex.PK, FIR Ex.PL was recorded on 12.11.2000 at 2.45 p.m.

The prosecution to prove its case brought into witness box Dr. S.K.Dhattarwal as PW1, Rajinder Kumar Patwari Halqa as PW2, HC Lachhman Singh as PW3, SI Ganga Ram Sone as PW4, Birbal as PW5, Kali Charan as PW6, Inspector Lachhman Singh as PW7, Mam Chand PW8, Inspector Ram Kumar as PW9, HC Prem Singh as PW10, HC Prem Chand as PW11 and Inspector Mehar Chand as PW12.

Learned counsel for the appellant has argued that no DNA test was conducted by the prosecution to establish as to whether

the bones and pieces of hair were that of deceased Meena Devi. Apart from the identification made by some pieces of cloth found there at the initial stage, nothing more has come on record to identify the dead body. It was incumbent upon the Investigating Officer to go through the process of a DNA test. Birbal PW5, the father of the deceased, has improved upon the statement along with Mam Chand PW8 that bangles, shoes and jewellery were also recovered lying next to the dead body. The extra judicial confession made before Kali Charan PW6 does not inspire confidence. There was no need for the appellant to go to Kali Charan PW6 and confess his guilt as Kali Charan PW6 has himself admitted, that he was neither a Sarpanch or a Nambardar nor did he go to the police occasionally. Appellant, in fact, remained in custody of the police for two months and the police not finding the actual culprits, foisted a false case on the appellant. The circumstances have not formed the chain of events to convict the appellant.

Learned counsel for the State has argued that there was no need for a DNA test, as identification of the remnants of the body of the deceased had been done by her father Birbal PW5 by identifying the clothes, which were lying next to the bones of the deceased. Further he identified the body by the bangles, shoes and the jewellery recovered from next to the body of the deceased. Birbal PW5 suspected the appellant right from the beginning that he is one who had committed the offence. He moved an application to the SHO, Police Station Ladwa dated 25.10.2000 Ex.DA, wherein he has

cast his suspicion that the appellant murdered his daughter. Further he gave another application Ex.PE to SI Ganga Ram Sone PW4 of Police Station Usava District Badaun (U.P.) on 4.12.2000, wherein again he reiterated that the appellant is one who had committed the murder of his daughter. Birbal PW5 in his testimony before the Court has stated, that he sent his daughter with the appellant, as the appellant stated that his sister, who was residing at Village Ladwa, was pregnant and she needed help. Deceased started crying and stated that she did not want to go with her husband i.e. the appellant as he beat her quite often. This statement of Birbal PW5 gets corroboration from the answer given by the appellant to question No.2 when the prosecution evidence was put to him under Section 313 Cr.P.C., where he has stated that he wanted to take his wife to Ladwa.

The extra judicial confession made before Kali Charan PW6 is truthful. It inspires confidence as it has been made by the appellant to a person who belongs to his village in Uttar Pradesh.

We have heard the learned counsel for the parties and perused the record with their assistance.

Appellant Badam Singh is no other person than the husband of deceased Meena Devi. Nothing has come on record by way of suggestion or in the statement of the appellant under Section 313 Cr.P.C. that after his wife was missing, he made any effort to try to find her. He did not go to any relative, nor to the police, to inform them that his wife Meena Devi was missing from his house for the

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last two months. It is after the appellant was arrested somewhere in the month of March, 2001 that he was challaned by the Investigating Officer. For more than two months the appellant was hiding and evading his arrest. Kali Charan PW6 resident of Village Bachheli, Police Station Usayat District Badaun (U.P.) produced the appellant before the police. Appellant made an extra judicial confession in the house of Mumtaz, the Headman (Pradhan) of Village Reethia. Appellant came to the house of the headman where Kali Charan PW6 was also present. Appellant confessed that he had killed his wife Meena Devi by strangulating her with a Sari at a place in District Kurukshetra (Haryana). He further confessed that deceased Meena Devi did not have a good moral character. After committing her murder, he had thrown her body in a sugarcane field. The testimony of this witness is truthful and inspires confidence.

Birbal PW5 has stated that his daughter Meena Devi resided with the appellant in his house at Village Reethia, Police Station Usava District Badaun (U.P.). About 1-½ years back before the occurrence, Meena Devi came to Chandigarh where Birbal PW5 had started working and selling vegetables in the Kisan Mandi. Appellant Badam Singh also came there. He requested Birbal PW5 to send Meena Devi along with him, as his sister who was living in Village Ladwa, was pregnant and she need assistance. On this, Meena Devi started weeping and stated that appellant Badam Singh beat her quite often. After giving gifts to their daughter as per custom, they sent her with appellant Badam Singh. Birbal PW5 asked

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for the address as to where he and his daughter would stay, but appellant Badam Singh did not give the address and stated that it would be not possible for him (PW5) to locate them in Village Ladwa. After about 20-25 days, appellant Badam Singh came back alone and told them that he along with his wife were going back to their home in U.P. and at Delhi somebody administered something to them, while they were travelling in a three-wheeler and then they were robbed of their ornaments and other valuables and Meena Devi had been taken away. Birbal PW5 told the appellant to accompany him to show the place from where his daughter had been kidnapped, but on the way appellant Badam Singh got down from the bus and did not come back.

Birbal PW5 from the very outset was suspecting, that mischief had been played by appellant Badam Singh. He (PW5) gave an application Ex.PE on 4.12.2000 at Police Station Usava, District Badaun. In the application Ex.PE, he stated that appellant Badam Singh was running here and there and was not residing in his own house for the reason that he did not want to face an inquiry. He further complained that appellant Badam Singh had hidden Meena Devi somewhere. This application was made to Sub Inspector G.R.Sone, who recorded D.D.R. that an offence under Section 364 I.P.C. is made out.

SI G.R.Sone PW4 came into witness box and has stated that he received an application from Birbal on 4.12.2000 and on the basis of the application, he recorded Roznamcha in Police Station

Usava District Badaun, which is Ex.PE. Another application was given by Birbal Ex.DA to the SHO, Police Station Ladwa (Haryana) on 25.10.2000 wherein he stated that action be taken against Badam Singh and his brother-in-law Rameshwar and his wife who are residents of Ladwa and Meena Devi be got recovered from them. It is clear from the two applications Ex.PE and Ex.DA that Birbal PW5 was suspecting that appellant Badam Singh had played mischief with his daughter Meena Devi. It is only after the arrest of the appellant on 23.3.2001, the appellant demarcated the spot where the dead body had been thrown. Birbal PW5 would not implicate his own son-in-law falsely for the murder of his daughter and let the actual culprits go scot free.

Learned counsel for the appellant has vehemently argued that no DNA test was conducted. It has come in evidence that the body of Meena Devi was identified by her father Birbal PW5. Birbal went to the Police Station Ladwa, clothes were shown to him and he identified the clothes to be of deceased Meena Devi. The ornaments were also shown to him, which he also identified as being those of Meena Devi. These were the same clothes and ornaments, which were recovered from next to the body of Meena Devi. The clothes and ornaments being Petticot Ex.P1, bangles Ex.P2 and chappal Ex.P3. Dr. S.K.Dhattarwal PW1 has stated that he performed the post mortem on the dead body of an unknown female on 10.11.2000 at 4.00 p.m. A multi coloured cloth in the form of ligature with fixed knot was found present and circumference was 54

cms. Some pieces of skin and soft tissues were found present inside the ligature. Some tufts of hair were also found present in the knot. Eight red and green bangles and one white metallic ring were also present. It is clear from the testimony of Dr. S.K.Dhattarwal PW1 that the clothes and ornaments were recovered from the place of occurrence as they had been brought along with the remains of the dead body of the deceased to the hospital. These were the very articles by which Birbal PW5 identified the body to be that of Meena Devi, his daughter. DNA test is only held at the time when the victim cannot be identified. Birbal PW5 is corroborated by the statement of Dr. S.K.Dhattarwal PW1.

We do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

October 9, 2006
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO